

January 9, 2006

BY HAND DELIVERY

Director
Commodity Procurement Policy &
Analysis Division
Farm Service Agency
United States Department of Agriculture
Room 5755-S
1400 Independence Avenue, SW
Washington, DC 20250-0512

BY FAX AND E-MAIL

Mr. Richard Chavez
United States Department of Agriculture
Fax: (202) 690-2221
E-mail: Richard.Chavez@USDA.gov

**Re: Procurement of Commodities for Foreign
Donation
7 CFR Part 1496, RIN 0560-AH39**

Gentlemen:

This letter is being submitted by American President Lines, Ltd., CP Ships USA, LLC, and Maersk Sealand (a) to request an extension of at least 45 days of the dates for comment in the above-referenced Docket established in the Commodity Credit Corporation ("CCC") Notice of Proposed Rule set out in the December 16, 2005 *Federal Register* (70 *Fed. Reg.* 74717) and (b) to protest the highly irregular procedures leading to and established in that notice. The signatories to this letter are all ocean carriers operating U.S.-flag vessels providing international transportation services, including the carriage of food aid cargo which is the subject of the proposed rule.

1. We note at the outset that the proposed rule has the potential for major impacts on all participants in the U.S. Government food aid programs – not only the commodity suppliers and the carriers participating in the food programs, but also the ports through which the food aid is shipped abroad, the commercial interests at those ports such as terminals, transloaders, and

January 9, 2006

Page 2

stevedores, and the railroads which move the commodities from the mills across country to the ports of exit. In and of itself this would mandate materially more time than the hypothetical 32 days for comment provided by the December 16, 2005 notice if meaningful and informed comment is to be available from all affected interests. In this regard, we characterize the notice period specified in the *Federal Register* notice as "hypothetical" because, coming as it did immediately prior to the Christmas and New Year's holidays, many interested parties will have been deprived of practical notice, or the practical ability to take advantage of that notice, during the holiday period.

2. There can be no legitimate reason for the truncated notice period specified in CCC's *Federal Register* notice. Executive Order 12866 of September 30, 1993 (58 *Fed. Reg.* 51735), to which the CCC refers (70 *Fed. Reg.* at 74719), states (Section 6(a)):

"* * * each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days."
(Emphasis supplied.)

CCC's notice provides no explanation of why a shorter notice period was specified as to the proposed rule. Indeed, as the *Federal Register* notice explicitly acknowledges, the existing procedure that CCC proposes to change "has been in place for many years." (70 *Fed. Reg.* at 74718). Moreover, although it is common knowledge that CCC has been exploring the option of a departure from existing procedures, CCC has provided no formal, prior notice of its intention to publish a proposed rule amending its existing regulations applicable to the procurement procedures. The proposed rule is nowhere identified in the Department of Agriculture's semi-annual regulatory agenda as published in the October 31, 2005 *Federal Register* (70 *Fed. Reg.* 64308) or as published on May 16, 2005 (70 *Fed. Reg.* 26583).

3. The issues raised by the proposed rule are materially complicated by the fact that the CCC procedures do not exist in a vacuum, but exist alongside and must be considered in conjunction with other statutory and regulatory requirements. The Cargo Preference Act of 1954 requires that (46 USC App. 1241(b)(2)):

"Every department or agency having responsibility under this subsection shall administer its programs with respect to this subsection under regulations issued by the Secretary of Transportation."

The CCC's *Federal Register* notice identifies that the Cargo Preference Act has significant implications to the CCC procurement process (see 70 *Fed. Reg.* 74718) but entirely fails to address those implications. Indeed, we understand that the Maritime Administration, which is

January 9, 2006
Page 3

the delegatee of the Secretary of Transportation under the Cargo Preference Act, was not consulted prior to CCC's publication of the proposed rule.

4. Further unexplained confusion is created by the references in the *Federal Register* Notice to the possible use of alternative procurement procedures (70 *Fed. Reg.* 74719), which are nowhere identified in the proposed rule itself.

In sum, the proposed rule is important, has broad implications to all private interests participating in the food aid programs, can only be considered in the context of other, associated regulatory regimes, and this requires the opportunity for thoughtful comment which cannot reasonably be provided absent the requested extension of the comment period.

Respectfully,

Charles E. Boggs
Vice President, Humanitarian Aid
American President Lines, Ltd.

James G. Dorrian
Director Government Marketing
Maersk Sealand

Charles B. Weymouth
Director Government Affairs
CP Ships USA, LLC